No. 03-374

In the

Supreme Court of the United States

THE STATE OF ILLINOIS,

Petitioner,

vs.

GREGORY FISHER,

Respondent.

On Petition for Writ of Certiorari to the Appellate Court of Illinois

REPLY BRIEF FOR PETITIONER

LISA MADIGAN
Attorney General of Illinois

GARY FEINERMAN
Solicitor General of Illlinois
100 West Randolph Street
Suite 1200
Chicago, Illinois 60601
(312) 814-3000

Attorneys for Petitioner

Of Counsel:

RICHARD A. DEVINE
State's Attorney of Cook County, Illinois

RENEE G. GOLDFARB
Counsel of Record
ALAN J. SPELLBERG
Assistant State's Attorneys
309 Richard J. Daley Center
Chicago, Illinois 60602
(312) 603-5496

Printed by Authority of the State of Illinois (P.O. 40116—51—12-22-03)

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii

ARGUMENT 1

CONCLUSION 6

TABLE OF AUTHORITIES

Cases PAGE(S)

Arizona v. Youngblood,
488 U.S. 51 (1988) 1, 2

Beecher v. Alabama,
389 U.S. 35 (1967) 3

California v. Trombetta,
467 U.S. 479 (1984) 1, 2

City of Revere v. Massachusetts Gen. Hosp.,
463 U.S. 239 (1983) 3

Indiana ex rel. Anderson v. Brand,
303 U.S. 95 (1938) 3

Michigan v. Long,
463 U.S. 1032 (1983) 2, 3, 5

Oregon v. Hass,
420 U.S. 714 (1975) 2

People v. Coleman, 183 Ill. 2d 366,
701 N.E.2d 1063 (1998) 4

People v. Newberry, 166 Ill. 2d 310,
652 N.E.2d 288 (1995) 1, 2, 3, 4, 5

People v. Sykes, 341 Ill. App. 3d 950,
793 N.E.2d 816 (1st Dist. 2003) 4, 5

People v. Williams, 192 Ill. 2d 548
736 N.E.2d 1001 (2000) 4

Statutes

28 U.S.C. §1257(a) 5

Illinois Supreme Court Rule 415(g)(i) 1, 2, 4

ARGUMENT

In its petition, the State of Illinois demonstrated that the Illinois Appellate Court erroneously found that respondent's Fourteenth Amendment due process rights were violated when evidence was destroyed as part of a routine process while he was a fugitive simply because he had made a general discovery request nearly 11 years earlier. In so ruling, the Appellate Court followed *People v. Newberry*, 166 Ill. 2d 310, 652 N.E.2d 288 (1995), which held that a defendant's due process rights are violated whenever evidence is destroyed following a discovery request, irrespective of any bad faith on the part of the police. Pet. 7-9. Petitioner further established that *Newberry* cannot be reconciled with this Court's decisions in *Arizona v. Youngblood*, 488 U.S. 51 (1988), and *California v. Trombetta*, 467 U.S. 479 (1984), and that, as a result, "Illinois courts are the only courts in the nation which hold that due process-destruction of evidence claims under the Fourteenth Amendment are dependent upon whether the defendant made a discovery request prior to the destruction of evidence." Pet. 8. Finally, petitioner demonstrated that no due process violation occurred in this case because the police acted in good faith and respondent was wholly responsible for the destruction of the evidence since he was a fugitive for more than 10 years. Pet. at 9-12.

In his Brief in Opposition, respondent does not dispute *any* of these points. Rather, his entire response is that the lower court's decision can be justified by an independent state ground because the Appellate Court *could* have ordered the same relief as a sanction for a discovery violation under Illinois Supreme Court Rule 415(g)(i). However, despite respondent's protestations to the contrary, a simple reading of the Illinois Appellate Court's decision demonstrates that it was based *exclusively* upon federal due process grounds, as respondent never asserted

a violation of Illinois's discovery rules or any other ground justifying reversal of the trial court's ruling.

Although the Appellate Court cited several Illinois decisions discussing *Newberry*, it never mentioned, much less applied, Illinois Supreme Court Rule 415(g)(i) or any other independent state ground. In fact, at the very outset of it discussion, the Appellate Court identified the issue as follows: "[respondent] contends that his *right to due process* was denied when the State destroyed the controlled substance at issue prior to trial." Pet. App. 11. (emphasis added). The court then proceeded to apply the due process analysis adopted by the Illinois Supreme Court in *Newberry*, and distinguished both *Youngblood* and *Trombetta* based upon the fact that the evidence was destroyed subsequent to respondent's discovery request. (Appendix at 13).

Undeniably, the fact that the Appellate Court "found it necessary to attempt to distinguish [*Youngblood* and *Trombetta*] reveals the federal basis" for its decision. *Oregon v. Hass*, 420 U.S. 714, 719-20 (1975). Moreover, as the Court held in *Michigan v. Long*, 463 U.S. 1032 (1983):

> *[W]hen . . . a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so.* If a state court chooses merely to rely on federal precedents as it would on the precedents of all other jurisdictions, then it need only make clear by a plain statement in its judgment or opinion that the federal cases are being used only for the purpose of guidance, and do not themselves compel the result that the court has reached.

Id. at 1040-41 (emphasis added).

Here, the Appellate Court's order fails to include any "plain statement" which would deprive this Court of jurisdiction. Therefore, it must be presumed that there were no adequate and independent grounds underlying its decision. *Id.* at 1042.

Apparently recognizing that the Appellate Court's decision is premised solely upon federal due process grounds, respondent tries to manufacture an independent state ground out of the *Newberry* decision itself. Specifically, respondent contends that since the *Newberry* court offered alternative reasons for affirming the trial court's order dismissing the indictment in that case—that the destruction of the evidence after a discovery request was made violated not only the defendant's right to due process, but also Illinois' discovery rules (166 Ill. 2d at 317-18, 652 N.E.2d at 292)—the Appellate Court's decision in the instant case must be understood to reflect that independent basis. However, this Court has long held that it "may review a state case decided on a federal ground even if it is clear that there was an available state ground for decision on which the state court could properly have relied." *Long*, 463 U.S. at 1038 n.4 (citing *Beecher v. Alabama*, 389 U.S. 35, 37, n.3 (1967)). See also *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 242 (1983) ("Because the court's decision was based on an interpretation of federal law, we have jurisdiction notwithstanding the fact that the same decision, had it rested on state law, would be unreviewable here."); *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 98 (1938) ("We cannot refuse jurisdiction because the state court might have based its decision, consistently with the record, upon an independent and adequate non-federal ground.").

Moreover, a brief review of the Illinois Supreme Court's decision in *Newberry* demonstrates that although it held

that it could have sustained the trial court's dismissal order as a proper exercise of discretion for a violation of the Illinois Supreme Court discovery rules, it believed that it was required to dismiss the charges in order to protect the defendant's due process rights. Specifically, the *Newberry* court stated: "we hold that dismissal of the charges is *mandated by due process* and is an appropriate discovery sanction under Supreme Court Rule 415(g)(i)." *Newberry*, 166 Ill. 2d at 311, 652 N.E.2d at 289 (emphasis added).

Furthermore, it is far from certain that the outcome of the proceedings in this case would have been the same had the Appellate Court addressed the question of whether the destruction of the evidence warranted a sanction under the Illinois Supreme Court Rules. First, in Illinois, the standard of review regarding discovery sanctions is "abuse of discretion" (*People v. Williams*, 192 Ill. 2d 548, 581, 736 N.E.2d 1001, 1019 (2000)), and the Illinois Supreme Court has made clear that the "abuse of discretion" standard is "the most deferential standard of review available with the exception of no review at all." *People v. Coleman*, 183 Ill. 2d 366, 387, 701 N.E.2d 1063, 1074 (1998) (internal quotation marks and citation omitted).

Additionally, unlike *Newberry*'s due process holding, Illinois courts have held that discovery sanctions should not be automatically imposed when evidence has been inadvertently destroyed. In *People v. Sykes*, 341 Ill. App. 3d 950, 793 N.E.2d 816 (1st Dist. 2003), the court explained:

> Supreme Court Rule 415 provides the trial court with several sanctions for the violation of a discovery rule, and once a trial court has determined that a discovery violation has occurred, the court may impose any sanction that, in its discretion, it deems just. The correct sanction to be applied for a discovery violation is a decision appropriately left to the discretion of the trial court, and its judgment shall be given great

> weight. We note that contrary to defendant's assertions, *Newberry* does not imply that the only available sanction for the destruction of evidence was to dismiss the indictment, only that the sanction chosen in that case was properly within the trial court's discretion.

Id. at 972, 793 N.E.2d at 836 (internal citations omitted).

Given the inherent difficulty in establishing an abuse of discretion for failing to impose a discovery sanction, respondent purposefully limited his appellate arguments to due process grounds because, under *Newberry*, relief was "mandated" for a due process violation. In fact, the Appellate Court expressly recognized the mandatory nature of *Newberry*'s holding as it stated that it was "required to follow" that decision. Pet. App. 16.

Thus, it is clear that the Appellate Court "decided the case the way it did because it believed that federal law required it to do so" (*Long*, 463 U.S. at 1041), and that no adequate and independent state ground basis exists for its conclusion. Accordingly, as respondent's arguments are utterly without merit, the State of Illinois has properly invoked this Court's jurisdiction under 28 U.S.C. §1257(a).

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

LISA MADIGAN
Attorney General of Illinois

GARY FEINERMAN
Solicitor General of Illlinois
100 West Randolph Street
Suite 1200
Chicago, Illinois 60601
(312) 814-3000

Attorneys for Petitioner

Of Counsel:

RICHARD A. DEVINE
State's Attorney of Cook County, Illinois

RENEE G. GOLDFARB
Counsel of Record
ALAN J. SPELLBERG
Assistant State's Attorneys
309 Richard J. Daley Center
Chicago, Illinois 60602
(312) 603-5496